

THE HON'BLE SRI JUSTICE P.S. NARAYANA

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WRIT PETITION No.22122 of 2007

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Dated: 29.10.2007

Between

Sd.Basheer, S/o.Masthansaheb

...Petitioner

And

The Joint Collector, Nellore and another.

...Respondents

THE HON'BLE SRI JUSTICE P.S. NARAYANA

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WRIT PETITION No.22122 of 2007

ORDER:

This Court ordered notice before admission on 12.10.2007 and granted interim suspension for a period of three weeks.

Heard Sri V.Sudhakar Reddy, the learned counsel representing the petitioner and also the learned Assistant Government Pleader for Civil Supplies.

Sri V.Sudhakar Reddy, the learned counsel for the petitioner had taken this Court through the contents of the affidavit filed in support of the writ petition and would maintain that in the light of the second proviso to Sub-Clause (4) of Clause 5 of G.O.Ms.No.47, Consumer Affairs, Food & Civil Supplies (CS.I) Department, dated 06.10.2007, the impugned order is liable to be quashed. The learned counsel had also drawn attention of this Court to the relevant portion of G.O.Ms.No.47, dated 06.10.2007.

The learned Assistant Government Pleader for Civil Supplies, however, would contend that let there be a direction to the concerned Revenue Divisional Officer to complete the enquiry in accordance with law at an early date and it would be a just order in the facts and circumstances of the case.

This writ petition is filed for issuance of writ of mandamus declaring the order of the Joint Collector, Nellore passed in Rc.E.485/2007, dated nil.09.2007, signed on 28.09.2007, dismissing the appeal filed against the order of the second respondent in Rc.F1.1457/2007, dated 03.07.2007, suspending the authorization of the petitioner, and directing the second respondent to finalise the case, as illegal, arbitrary and contrary to the provisions of A.P.State Public Distribution System Control Order, 2001 and to set aside the orders of the first respondent as well as the second respondent passed in Rc.E.485/2007 dated 28.09.2007 and Rc.F1.1457/2007 dated 03.07.2007 respectively.

It is stated by the writ petitioner that he is a permanent Fair Price Shop Dealer of Southrajupalem Village and he has been distributing

the essential commodities to the cardholders for the past 23 years without any complaint whatsoever either from the cardholders or from the authorities concerned. It is also stated that while so, the second respondent passed an order in Rc.FI.1457/2007, dated 03.07.2007, placing his authorization under suspension pending enquiry on the ground that there are certain irregularities in the maintenance of registers as per the reports of the CSTD, Nellore (R) dated 01.07.2007. It is further stated in the said suspension order that the CSTD, Nellore has inspected the fair price shop on 30.06.2007, that on verification of stock and sales registers, he has noticed that the petitioner had committed grave irregularities in maintenance of the stock and sales registers, that he failed to obtain the signatures and thumb impressions of the cardholders in the sales register in token of receiving the essential commodities, that the sales registers for wheat and sugar were not maintained properly and that on verification of stock and sales register of 6/2007 there are certain variations. It is further stated that aggrieved by the said order, the petitioner had filed an appeal under Clause 20(1) of A.P.S.P.D.S. Control Order 2001 before the Joint Collector, Nellore, the first respondent herein. But unfortunately, the first respondent dismissed his appeal vide Rc.E.485/2007, dated 28.09.2007, directing the second respondent to issue show cause notice and finalise the case within eight weeks. The order of the first respondent is illegal, contrary to the provisions of Control Order 2001 and not sustainable. The power conferred on the second respondent vide G.O.Ms.No.8, CA, F&CS Dept., dated 01.02.2006 is taken away with retrospective effect by G.O.Ms.No.47, CA, F&CS (CS.I) Dept. dated 06.10.2007, and therefore, the Tahsildar has no power or jurisdiction to conduct an enquiry against the fair price shop dealers and to take disciplinary action. Since the said power is restored back to the Revenue Divisional Officer, the order of the Joint Collector, Nellore is contrary to the provisions of the Control Order and liable to be set aside. It is further stated that by G.O.Ms.No.47, the

second proviso is added to Sub-Clause (4) of Clause 5, which reads as follows:

“provided further that the disciplinary authority viz. Assistant Supply Officer/Tahsildar concerned shall also exercise the power of suspending the authorization of the erring F.P. Shop dealer and tagging on the cards to the nearest F.P. Shop pending final action by the appointing authority, for a period (90) ninety days only. Further action of continuing the suspension beyond (90) ninety days or cancellation of authorization shall be taken by the “appointing authority” as well as the disciplinary authority viz; Revenue Divisional Officer/District Supply Officer.”

From the above, it is clear that the Tahsildar has no authority to conduct an enquiry and the suspension order even if passed by the Tahsildar shall automatically lapse after 90 days. Therefore, both the orders are not sustainable and liable to be set aside. As per the ratio laid down by this Court in A.Neelima v. The Joint Collector, Kurnool (1996 (1) A.P.L.J.266 [HC]), the F.P. Shop dealer cannot be continued under suspension beyond 90 days and if the enquiry is not completed within 90 days, his authorization shall be restored. The second respondent passed the suspension order on 03.07.2007 and now more than 100 days have been lapsed and no show cause has been issued to him till date.

In the light of the circumstances explained, and also the relevant portion of G.O.Ms.No.47, referred to supra, this Court is of the considered opinion that the impugned orders as such cannot be sustained.

G.O.Ms.No.47, dated 06.10.2007, reads as under:

“GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

Civil Supplies – The Andhra Pradesh Public Distribution System (Control) Order, 2001 – Amendment – Notification – Issued.

Consumer Affairs, Food & Civil Supplies (CS.I) Department

G.O.Ms.No.47 Date:06.10.2007

Read the following:-

1. G.O.Ms.No.16, F & CS Dept. (CS.I)
 dt.06.04.2002.
2. G.O.Ms.No.53, F & CS Dept. (CS.I)
 dt.06.10.2003.
3. G.O.Ms.No.8, CA F & CS Dept. dt.01.02.2006.

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ORDER:

Orders were issued in the reference 3rd read above, notifying the Disciplinary authority under the A.P. Public Distribution System (Control) Order, 2001 to exercise powers of disciplinary control against F.P. Shop dealers in the event of any irregularities or contravention of the provisions of the said Control order are noticed by the enforcement officers viz. Tahsildars (MROs) / ASOs of the areas concerned. The powers of disciplinary control have been entrusted to these authorities viz. Tahsildars /Assistant Supply Officers, due to the reason that the Revenue Divisional Officers / Sub Collector, and District Supply Officers of the areas concerned have to attend multifarious activities at the divisional level or at the district level and that it was felt difficult for such authorities to take follow-up action on the complaints or adverse reports received against F.P. Shop Dealers at Mandal level in the event of irregularities noticed. The powers entrusted to the Revenue Divisional Officers / District Supply Officers regarding appointment of F.P. Shop Dealers under A.P. Public Distribution System (Control) Order, 2001 are statutory in nature and they have absolute and inherent power of taking disciplinary action suo motu as appointing authority as well as disciplinary authority. The power of disciplinary action entrusted to Tahsildar / Assistant Supply Officers is only limited and they can take immediate action against the F.P. Shop Dealer at the Mandal Level on receipt of complaints / adverse reports or as per the recommendations of Food Advisory Committee at the Mandal level. However such authorities cannot resort to appointment of F.P. Shop Dealer under A.P. Public Distribution System (Control) Order, 2001, such power rests with the appointing authority alone. In order to dispel the misconception and to enable the respective authorities to exercise the disciplinary power, it is thus decided to further amend the said Control Order. The appended notification will be published in the Extra-Ordinary issue of Andhra Pradesh Gazette.

2. The Director of Printing, Stationery and Stores purchases, Hyderabad is requested to publish the appended notification in an Extra-ordinary issue of Andhra Pradesh Gazette, immediately and send (600) copies of the notification to this

Department. The Telugu and Urdu of the notification will be furnished by the Director of Translation to the Director of Printing and Stationary Hyderabad for publication of the same under intimation to this Department and General Administration Department. He is also requested to take necessary action to publish the same in District Gazettes.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

G.N.RAO
EX.OFFICIO SECRETARY TO GOVERNMENT.”

In the light of the above, the impugned orders in the writ petition are hereby quashed. But, however, the competent authority is given liberty to initiate appropriate action against the petitioner, if the competent authority requires to do so.

The writ petition is accordingly disposed of. No costs.

P.S.Narayana, J

Date: 29.10.2007

Note: 1. L.R.Copy to be marked
2. Furnish CC in two days
B/o
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